FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application No. 1948/2007

Santosh Shamsunder Kewat
Vs
State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. Anil Mardikar, Advocate for applicant.
Mr Jichkar, APP for State.

Coram: C. L. PANGARKAR J.
Dated : 3rd August 2007

Heard.

This is an application under Section 439 of Criminal Procedure Code.

It is alleged that one Kailash was playing with his friends and there was some dispute in which it is alleged that the present applicant and 4 others had poured kerosene on the person of the deceased and set him on fire. Kailash was immediately removed to the hospital at

Murtizapur and from there to Akola. His two dying declarations were recorded by the Executive Magistrate.

Although the incident took place on 29.06.05 the offence came to be registered on 24.09.06. Present accused applicant has been arrested. Application for bail filed before the Court of Sessions has been rejected. The accused has therefore moved this Court for grant of bail under Section 439 Criminal Procedure Code.

Learned counsel for the applicant firstly contended that the bed head ticket when the deceased was admitted in the hospital at Murtizapur clearly goes to show that history of accidental burns was given. This entry in the bed head ticket is the first in time and assumes great importance. At the time of admission this history was given that deceased had suffered injuries accidentally. Admittedly none of the accused had

admitted the deceased to that hospital, therefore, the history must have been given either by deceased or by some other person who is not enmically deposing against the deceased. He must have seen the incident or he must have been told about that incident. In the circumstances that history has to be taken into account. The second dying declaration itself implicates the present accused as well as other 4 persons. But the third dying declaration that is recorded subsequently on 02.07.05 at 13-14 hours exonerates all accused and it appears that the deceased had set himself on fire. Obviously, therefore, there are two statements which certainly exonerates the applicants. Learned counsel for the State submitted that the father and the brother of the deceased had given statement before the police that the deceased had told him that he was set on fire by the

present applicant. Dying declaration as recorded by the Executive Magistrate primafacie exonerates the applicant. The bed head ticket also exonerates the applicant and the most important thing is that although the incident occurred on 29.06.05 and the dying declaration was itself recorded on 29.06.05, no offence came to be registered for almost 15 months and to my mind this itself is enough to release the accused on bail.

It is stated that rest of the accused have already been released on bail. Their case in fact cannot be different than the present applicant and even on the basis of parity the present applicant is certainly entitled to be released on bail. Hence the order:

Applicant/accused be released on bail on his entering into personal bond in the sum of Rs. 5000/- with one surety in the like amount.

He shall not tamper with the prosecution witnesses and shall attend the police station Murtizapur on every Sunday between 9 a.m. to 11 a.m. until conclusion of the trial.

Judge.

svk